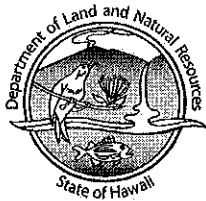


LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

November 29, 2007

LAURA H. THIELEN
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ALLAN A. SMITH
INTERIM DEPUTY DIRECTOR - LAND

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIKOOLOAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Chairperson and Members
Board of Land and Natural Resources
State of Hawai'i
Honolulu, HI 96813

Land Board Members:

SUBJECT: REQUEST FOR APPROVAL TO ENTER INTO AN *IN SITU* BURIAL AGREEMENT WITH FALKO PARTNERS, LLC FOR THE HUMAN SKELETAL REMAINS FOUND ON THEIR PROPERTY AT WAIPAKE AHUPUA'A, KO'OLAU DISTRICT, ISLAND OF KAUAI [TMK (4) 5-1-03:06]

Submitted for your consideration is a request to enter into an *In Situ* burial agreement with Falko Partners, LLC to implement the conditions agreed upon by the landowner and accepted by the State Historic Preservation Division.

Section 6E-43, and 6E-43.6, Hawaii Revised Statutes, require the State to regulate the proper treatment of human skeletal remains over fifty years old, at any site other than a known, maintained, actively used cemetery. In order to provide perpetual protection for the newly established burial site for the skeletal remains, its location will be recorded in the Bureau of Conveyances together with the attached *In Situ* agreement. This *In Situ* Agreement establishes a two meter permanent buffer zone, access rights for lineal and cultural descendants and states that the burial will not be willfully disturbed by the landowner, its successors and assigns.

The office of the Attorney General has conducted a review of the *In Situ* agreement and all suggested amendments were incorporated into the attached agreement.

RECOMMENDATION

That the Board authorize Chairperson Thielen to execute the attached *In Situ* agreement with Graham and Shelly MacDonald.

Respectfully submitted,



Linda Kaleo Paik, Cultural Specialist
Historic Preservation Division

APPROVED FOR SUBMITTAL:



LAURA THIELEN, Chairperson
Board of Land and Natural Resources

[illegible]

REGULAR SYSTEM

3

2. WHEREAS, the State, pursuant to Section 6E-43 and 6E-43.6, Hawai'i Revised Statutes, is responsible for regulating the proper treatment of human skeletal remains over fifty years old, at any site other than a known, maintained, actively used cemetery; and

3. WHEREAS, the parties desire to enter into this Agreement to leave *in situ*, the Burial Site.

II. AGREEMENT

NOW THEREFORE, in consideration of the above and the terms and conditions contained herein, the parties agree as follows:

1. The Landowner agrees to allow skeletal remains to be left *in situ* in the burial Site on the Landowner's Property.

2. The Landowner, upon recommendation from the Department of Land and Natural Resources ("DLNR") and the Kaua'i Ni'ihau Islands Burial Council ("KNIBC"), agrees to establish a permanent two (2) meter buffer zone completely surrounding the Burial Site.

3. The Landowner, upon recommendation from the DLNR and the KNIBC, agrees that no digging shall take place within the buffer zone. Landscaping with grass or shallow rooted native plants may occur within the permanent buffer zone.

4. Interim and long-term preservation as set forth in the approved Burial Treatment Plan shall ensure that the integrity and context of the Burial Site is preserved.

5. The Landowner agrees to identify the location of the Burial Site on a map and provide such information to the DLNR, Division of Historic Preservation.

6. The Landowner agrees to provide living Cultural and Lineal descendants, as determined by the KNIBC in conjunction with the State Historic Preservation Division ("SHPD") Burial Sites Program, reasonable access rights to visit the Burial Site for cultural purposes. The landowner shall provide reasonable access across the Landowner's Property at reasonable locations as determined by the Landowner, from time to time. A list of names and contact information of the Cultural and Lineal descendants shall be provided to the Landowner by the SHPD-Burial Sites Program. Such right of access shall be subject to the rules and policies of the Landowner and shall be limited to reasonable hours of the day. Cultural and Lineal descendants are to contact the Landowner or their representatives thereof to confirm dates and times of visitation. The request for visitation must be made at least 24 hours in advance to confirm date and time.

7. The Landowner, on behalf of itself and its successors and assigns, covenants and agrees not to willfully disturb in any manner, or allow the disturbance of in any manner, the repose of any human skeletal remains which are buried in the Burial Site.

8. In the event the Landowner learns that the human skeletal remains, or any part thereof, are unearthed by natural causes or otherwise, the Landowner agrees to immediately notify the DLNR. The Landowner agrees not to handle the human skeletal remains in any

manner. The DLNR, upon recommendation of the KNIBC, shall take proper action to secure the remains in place.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the Seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused this Agreement to be executed as of the day, month, and year first above written.

STATE OF HAWAII

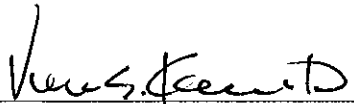
By _____
Chairperson, Board of Land and Natural Resources

By _____
Member, Board of Land and Natural Resources

LANDOWNER
FALKO PARTNERS, LLC, A California limited
Liability company, by its Managing Member,
LYON VENTURES LLC, a California
limited liability company

By _____
MATT EVANS
Its Manager

APPROVED AS TO FORM:



Deputy Attorney General

Dated: 12/4/07

STATE OF HAWAI'I

)

) SS.

COUNTY OF

)

On this ____ day of _____, 20____, before me personally appeared _____ to me known to be the person described in and who executed the foregoing instrument and acknowledged that _____ executed the same as _____ free act and deed.

Notary Public, State of Hawai'i

My commission expires: _____

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return by Mail to:

BELLES GRAHAM PROUDFOOT & WILSON, LLP (MWG)

4334 RICE STREET SUITE 202

LIHUE KAUAI HI 96766

(808) 246-6962

This document contains _____ pages.

TYPE OF DOCUMENT:

IN SITU AGREEMENT

PARTIES TO DOCUMENT:

LANDOWNER:

FALKO PARTNERS, LLC,
a California limited liability company
P. O. Box 588
Kapaa, Kauai, Hawaii 96746

STATE:

STATE OF HAWAII
Board of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813

TAX MAP KEY FOR PROPERTY:

(4) 5-1-03:06

IN SITU AGREEMENT

This In Situ Agreement dated _____, 2007, by and between FALKO PARTNERS, LLC, a California limited liability company, whose mailing address is P. O. Box 588, Kapaa, Kauai, Hawaii 96746 ("Landowner"), and the STATE OF HAWAII, by its Board of Land and Natural Resources, whose mailing address is Kalanimoku Building, 1151 Punchbowl Street, Honolulu, Hawaii 96813 ("State").

I. WITNESSETH

1. WHEREAS, the Landowner owns real property at Waipake Ahupua'a, Ko'olau District, Island of Kauai, State of Hawaii, identified by Kauai Tax Map Key No. (4) 5-1-03:06 ("Property"), in which Property an unmarked burial site containing certain skeletal remains has been identified, being the burial site and skeletal remains ("Burial Site") identified as SIHP No. 50-30-04-771D in the Burial Treatment Plan For An Archaeological Inventory Survey prepared by Jon Tulchin, B.A. and Hallett H. Hammett, Ph.D. (Cultural Surveys Hawaii, Inc.) dated August 4, 2007 ("Burial Treatment Plan"); and

2. WHEREAS, the State, pursuant to Section 6E-43 and 6E-43.6, Hawaii Revised Statutes, is responsible for regulating the proper treatment of human skeletal remains over fifty years old, at any site other than a known, maintained, actively used cemetery; and

3. WHEREAS, the parties desire to enter into this Agreement to leave *in situ*, the Burial Site.

II. AGREEMENT

NOW, THEREFORE, in consideration of the above and the terms and conditions contained herein, the parties agree as follows:

1. The Landowner agrees to allow skeletal remains to be left *in situ* in the Burial Site on the Landowner's Property.

2. The Landowner, upon recommendation from the Department of Land and Natural Resources ("DLNR") and the Kauai Niihau Islands Burial Council ("KNIBC"), agrees to establish a permanent two (2) meter buffer zone completely surrounding the Burial Site.

3. The Landowner, upon recommendation from the DLNR and the KNIBC, agrees that no digging shall take place within the buffer zone. Landscaping with grass or shallow rooted native plants may occur within the permanent buffer zone.

4. Interim and long-term preservation as set forth in the approved Burial Treatment Plan shall ensure that the integrity and context of the Burial Site is preserved.

5. The Landowner agrees to identify the location of the Burial Site on a map and provide such information to the DLNR, Division of Historic Preservation.

6. The Landowner agrees to provide living Cultural and Lineal descendants, as determined by the KNIBC in conjunction with the State Historic Preservation Division ("SHPD") Burial Sites Program, reasonable access rights to visit the Burial Site for cultural purposes. The Landowner shall provide reasonable access across the Landowner's Property at reasonable locations as determined by the Landowner, from time to time. A list of names and contact information of the Cultural and Lineal descendants shall be provided to the Landowner by the SHPD-Burial Sites Program. Such right of access shall be subject to the rules and policies of the Landowner and shall be limited to reasonable hours of the day. Cultural and Lineal descendants are to contact the Landowner or their representatives thereof to confirm dates and times of visitation. The request for visitation must be made at least 24 hours in advance to confirm date and time.

7. The Landowner, on behalf of itself and its successors and assigns, covenants and agrees not to willfully disturb in any manner, or allow the disturbance of in any manner, the repose of the human skeletal remains which are buried in the Burial Site.

8. In the event the Landowner learns that the human skeletal remains, or any part thereof, are unearthed by natural causes or otherwise, the Landowner agrees to immediately notify the DLNR. The Landowner agrees not to handle the human skeletal remains in any manner. The DLNR, upon recommendation of the KNIBC, shall take proper action to secure the remains in place.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the Seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused this Agreement to be executed as of the day, month, and year first above written.

APPROVED AS TO FORM:

STATE OF HAWAII,
BOARD OF LAND AND NATURAL
RESOURCES

Deputy Attorney General

By _____
Its Chairperson

Dated: _____

By _____
Its Member

LANDOWNER:

FALKO PARTNERS, LLC, a California limited liability company, by its Managing Member, LYON VENTURES LLC, a California limited liability company .

By _____
MATT EVANS
Its Manager

STATE OF _____)
) SS.
COUNTY OF _____)

On this _____ day of _____, 20____, before me appeared MATT EVANS, to me personally known, who, being by me duly sworn, did say that he is the Manager of LYON VENTURES LLC, a California limited liability company ("Lyon Ventures"), that Lyon Ventures is the Managing Member of FALKO PARTNERS, LLC, a California limited liability company ("Company"), and that said instrument was signed on behalf of said Company by authority of its Members, and the said Officer acknowledged said instrument to be the free act and deed of said Company and Lyon Ventures.

Name of Notary:
Notary Public, in and for said County and State.

My commission expires: _____

2001 - 058662

Exhibit A

ALL of that certain parcel of land (being all of Land Commission Award 10,018 to Lolohi; Land Commission Award 10,020, Apanas 1 and 2 to Luuloa; Royal Patent 4324, Land Commission Award 6335, Apanas 1 and 2 to Keanini; Royal Patent 3916, Land Commission Award 6644, Apana 2 to Pahi; Royal Patent 4325, Land Commission Award 6585, Apanas 1 and 2 to Palaha; and being portions of Royal Patent 3586, Land Commission Award 6730 to Naeole; Land Commission Award 8257 to Hanai; and Deed: Ana Kini & J. H. Kahilina to Rebeka), situated at Waipake, Hanalei, Island and County of Kauai, State of Hawaii, being PARCEL 5, described as follows:

BEGINNING at a 1-1/2" pipe in concrete at the South corner of this piece of land, and on the North side of Old Government Road (50 feet wide), the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOLQAA" being 3,336.70 feet North and 10,481.66 feet West, thence running by azimuths measured clockwise from true South:

1. 119° 05' 644.40 feet along the North side of Old Government Road (50 feet wide);
Thence along the North side of Old Government Road (50 feet wide), on a curve to the right with a radius of 675.00 feet, the chord azimuth and distance being:
2. 130° 52' 30" 275.88 feet;
3. 142° 40' 552.00 feet along the North side of Old Government Road (50 feet wide);
Thence along the North side of Old Government Road (50 feet wide), on a curve to the right with a radius of 675.00 feet, the chord azimuth and distance being:
4. 149° 30' 160.62 feet;
5. 156° 20' 223.00 feet along the North side of Old Government Road (50 feet wide);
Thence along the North side of Old Government Road (50 feet wide), on a curve to the left with a radius of 300.00 feet, the chord azimuth and distance being:

Exhibit A

6.	122°	25'	334.79	feet;
7.	88°	30'	70.00	feet along the North side of Old Government Road (50 feet wide);
Thence along the North side of Old Government Road (50 feet wide), on a curve to the right with a radius of 225.00 feet, the chord azimuth and distance being:				
8.	114°	45'	221.14	feet;
9.	141°	00'	136.00	feet along the North side of Old Government Road (50 feet wide);
Thence along the North side of Old Government Road (50 feet wide), on a curve to the left with a radius of 175.00 feet, the chord azimuth and distance being:				
10.	103°	15'	214.28	feet;
11	65°	30'	257.00	feet along the North side of Old Government Road (50 feet wide);
Thence along the North side of Old Government Road (50 feet wide), on a curve to the right with a radius of 675.00 feet, the chord azimuth and distance being:				
12.	68°	51'	30"	79.08 feet to a 1-1/2" pipe in concrete;
13.	220°	26'	1,013.72	feet along R. P. 7060, L. C. Aw. 8559-B, Apana 40 to Wm. C. Lunalilo (Certificate of Boundaries No. 3);
14.	207°	42'	1,541.10	feet along R. P. 7060, L. C. Aw. 8559-B, Apana 40 to Wm. C. Lunalilo (Certificate of Boundaries No. 3);
15.	204°	48'	1,386.00	feet along R. P. 7060, L. C. Aw. 8559-B, Apana 40 to Wm. C. Lunalilo (Certificate of Boundaries No. 3);

Exhibit A

16.	198°	17'	1,153.70	feet along R. P. 7060, L. C. Aw. 8559-B, Apana 40 to Wm. C. Lunalilo (Certificate of Boundaries No. 3);
17.	219°	50' 40"	512.98	feet along R. P. 7060, L. C. Aw. 8559-B, Apana 40 to Wm. C. Lunalilo (Certificate of Boundaries No. 3), to a "+" cut on rock (the rock being at top of bank of seashore); Thence along the highwater mark at seashore (highwater mark being the outer ledge of top bank of rock outcrop), the direct azimuth and distance being:
18.	348°	41' 40"	477.00	feet;
19.	18°	58'	132.00	feet along R. P. 4232, L. C. Aw. 6582, Apana 2 to Pelehu;
20.	303°	58'	99.00	feet along R. P. 4232, L. C. Aw. 6582, Apana 2 to Pelehu;
21.	198°	58'	132.00	feet along R. P. 4232, L. C. Aw. 6582, Apana 2 to Pelehu; Thence along the highwater mark at seashore, (highwater mark being the vegetation line) to an old "+" cut on a large boulder, (boulder being at top of bank of seashore), the direct azimuth and distance being:
22.	300°	25'	3,123.56	feet;
23.	33°	00'	1,110.00	feet along Lot D-1 (Map 4) of Land Court Application 1161 to an old 1" pipe;
24.	43°	30'	1,881.00	feet along Lot D-1 (Map 4) of Land Court Application 1161;
25.	30°	00'	2,365.97	feet along Lot D-1 (Map 4) of Land Court Application 1161 to the point of beginning and containing a gross area of 357.496 acres and a net area of 347.286 acres after deducting the following Exclusions (Exclusions 2, 3, 4 and 5);

Exhibit A

EXCLUSION 2

Being all of Royal Patent 3916, Land Commission Award 6644,
Apana 1 to Pahi

Situated at Waipake, Hanalei, Island and County of Kauai, State of Hawaii

Beginning at the North corner of this piece of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOLOAA" being 5,472.26 feet North and 12,153.41 feet West, thence running by azimuths measured clockwise from true South:

- | | | | | |
|----|------|-----|--------|---|
| 1. | 311° | 58' | 244.20 | feet along R. P. 3586, L. C. Aw. 6730 to Naeole; |
| 2. | 17° | 58' | 204.60 | feet along R. P. 3586, L. C. Aw. 6730 to Naeole; |
| 3. | 103° | 58' | 66.00 | feet along R. P. 3586, L. C. Aw. 6730 to Naeole and Deed: Ana Kini & J. H. Kahilina to Rebeka; |
| 4. | 173° | 58' | 66.60 | feet along R. P. 3586, L. C. Aw. 6730 to Naeole; |
| 5. | 103° | 58' | 54.67 | feet along R. P. 3586, L. C. Aw. 6730 to Naeole; |
| 6. | 5° | 58' | 52.41 | feet along R. P. 3586, L. C. Aw. 6730 to Naeole; |
| 7. | 83° | 58' | 39.60 | feet along R. P. 3586, L. C. Aw. 6730 to Naeole; |
| 8. | 188° | 58' | 323.40 | feet along R. P. 3586, L. C. Aw. 6730 to Naeole to the point of beginning and containing an area of 1.07 acres. |

Exhibit A

EXCLUSION 3

Being all of Royal Patent 4232, Land Commission Award 6582,
Apana 1 to Pelehu

Situated at Waipake, Hanalei, Island and County of Kauai, State of Hawaii

Beginning at the North corner of this piece of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOLOAA" being 6,120.40 feet North and 11,207.93 feet West, thence running by azimuths measured clockwise from true South:

- | | | | | |
|----|------|-----|--------|---|
| 1. | 280° | 58' | 185.80 | feet along R. P. 3586, L. C. Aw. 6730 to Naeole; |
| 2. | 20° | 58' | 224.32 | feet along R. P. 3586, L. C. Aw. 6730 to Naeole; |
| 3. | 105° | 58' | 125.25 | feet along R. P. 3586, L. C. Aw. 6730 to Naeole; |
| 4. | 184° | 58' | 211.20 | feet along R. P. 3586, L. C. Aw. 6730 to Naeole to the point of beginning and containing an area of 0.77 acres. |

EXCLUSION 4

Being a portion of Royal Patent 3586, Land Commission Award 6730,
to Naeole

Being also all of Deed: Ana Kini & J. H. Kahilina to Kaukau

Situated at Waipake, Hanalei, Island and County of Kauai, State of Hawaii

Beginning at the East corner of this piece of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOLOAA" being 7,656.76 feet North and 10,456.14 feet West, thence running by azimuths measured clockwise from true South:

- | | | | | | |
|----|------|-----|-----|--------|---|
| 1. | 353° | 11' | 40" | 315.50 | feet along the remainder of R. P. 3586, L. C. Aw. 6730 to Naeole; |
| 2. | 83° | 11' | 40" | 289.00 | feet along the remainder of R. P. 3586, L. C. Aw. 6730 to Naeole; |

EXHIBIT "A"

All of that certain parcel of land (portion of the land described in and covered by Royal Patent Number 3568, Land Commission Award Number 6730 to Naeole) situate, lying and being at Waipake, Koolau, Island and County of Kauai, State of Hawaii, and thus bounded and described:

Beginning at a pipe at the East corner of this lot, the coordinates of said point of beginning referred to Government Survey Trig. Station "KILAUEA" being 5,653.90 feet South and 14,897.55 feet East, thence running by azimuths measured clockwise from true South:

1.	83°	10'	00"	289.00	feet along the remainder of R. P. 3586, L. C. Award to Naeole to a pipe;
2.	349°	41'	30"	171.00	feet along same to a pipe;
3.	5°	10'	00"	312.00	feet along same, passing over a pipe at 162.00 feet to the middle of Waipake Stream;
					Thence along the middle of Waipake Stream, the direct azimuth and distance being;
4.	59°	10'	00"	260.00	feet;
5.	185°	10'	00"	262.00	feet along the remainder of R. P. 3586, L. C. Award 6730 to Naeole to a pipe;
6.	239°	10'	00"	19.80	feet along same to a pipe;
7.	144°	10'	00"	235.00	feet along same to a pipe;
8.	219°	40'	00"	152.00	feet along L. C. Award 10020, Apana 1 to Luuloa to a pipe;
9.	163°	10'	00"	113.50	feet along same to a pipe;
10.	249°	10'	00"	128.50	feet along the remainder of R. P. 3586, L. C. Award 6731 to Naeole to a pipe in the middle of Waipake Stream;
11.	224°	40'	00"	173.50	feet along same and the middle of Waipake Stream to a pipe;
12.	258°	10'	00"	262.00	feet along the remainder of R. P. 3586, L. C. Award 6730 to Naeole to a pipe;
13.	353°	10'	00"	315.50	feet along same to the point of beginning and containing an area of 6.00 acres, more or less.

Being the same land conveyed to Reginald Thomas Kirkwood and Joyce Woltz, husband and wife, as tenants by the entirety, by Deed dated November 20, 1987, recorded in the Bureau of Conveyances of the State of Hawaii in Book 22438 at Page 785.

TOGETHER WITH any and all built-in furniture, attached existing fixtures, built-in appliances, water heaters, electrical and/or gas and plumbing fixtures and attached carpeting, if any, and such other items of personal property, if any, which are still situated on the real property, in whatever condition they presently exist.